

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57815; File No. SR-NYSEArca-2007-104)

May 12, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing Standards for Warrants, Rights, and Units

I. Introduction

On October 3, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to apply certain initial and continued listing standards to rights to purchase listed securities and to adopt new listing requirements for Units.<sup>3</sup> On March 27, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on April 8, 2008.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> “Units” are defined as paired securities which may be transferred and traded only in combination with one another as a single economic unit. See NYSE Arca Equities Rule 5.1(b)(20). Currently, the Exchange has continued listing standards for Units in NYSE Arca Equities Rule 5.5(a), which references NYSE Arca Equities Rules 5.5(b) – (e). NYSE Arca Equities Rules 5.5(b) – (e) relate to the continued listing requirements for common stock and common stock equivalent securities, preferred stock and secondary classes of common stock, bonds and debentures, and warrants, respectively. See NYSE Arca Equities Rules 5.5(b) – (e). See also infra note 9.

<sup>4</sup> See Securities Exchange Act Release No. 57603 (April 2, 2008), 73 FR 19125.

The Exchange proposes to: (1) amend NYSE Arca Equities Rules 5.2(f) and 5.5(e), the Exchange's initial and continued listing standards for warrants, to apply such standards to rights to purchase securities;<sup>5</sup> and (2) adopt new NYSE Arca Equities Rule 5.2(k) to add listing standards for Units. The Exchange states that the proposed rule changes herein are modeled upon the rules of The NASDAQ Stock Market LLC ("Nasdaq") and provisions contained in the Company Guide of the American Stock Exchange LLC ("Amex").<sup>6</sup>

#### Listing Standards for Warrants and Rights

Currently, NYSE Arca Equities Rule 5.2(f) addresses the Exchange's initial listing standards for warrants. The Exchange proposes to add rights to this Rule and apply these same initial listing standards to both warrants and rights to purchase securities.<sup>7</sup> As is the case for warrants, at least 500,000 rights must be publicly held by not less than 250 public beneficial holders under NYSE Arca Equities Rule 5.2(f)(1), as amended. The purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

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<sup>5</sup> The initial and continued listing standards for warrants under NYSE Arca Equities Rules 5.2(f) and 5.5(e), respectively, were approved by the Commission in 1994. See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR-PSE-93-12) (approving quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities).

<sup>6</sup> The Exchange states that Nasdaq's initial listing standards for warrants and rights are set forth in Nasdaq Rule 4420(d), and its continued listing standards for warrants and rights are set forth in Nasdaq Rule 4450(d). In addition, Nasdaq's initial listing standards for units are set forth in Nasdaq Rule 4420(h). The Exchange also states that the proposal regarding the listing standards for Units are based, in part, on provisions contained in the Amex Company Guide. See infra note 12.

<sup>7</sup> The Exchange states that Nasdaq made a similar change to its rule, which is now contained in Nasdaq Rule 4420(d). See Securities Exchange Act Release No. 43435 (October 11, 2000), 65 FR 62779 (October 19, 2000) (SR-NASD-99-69) (approving, among other things, the inclusion of rights in the initial listing standards for warrants).

Currently, NYSE Arca Equities Rule 5.2(f)(2) provides, in part, that the Exchange will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent continued listing requirements) or will be listed on the Exchange concurrently with the warrants. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(f)(2) to provide that the common stock of the company or other security underlying the warrants and rights must be listed and trading (and meets the pertinent continued listing standards), or will be listed and trading, on a national securities exchange concurrently with the listing and trading of warrants or rights, as applicable. The Exchange notes that it would not list a warrant or right if the security underlying such warrant or right is no longer trading or is subject to a trading halt, as imposed by the national securities exchange listing such underlying security. Therefore, the Exchange believes that investors would remain protected.

Currently, NYSE Arca Equities Rule 5.5(e) addresses the continued listing of warrants on the Exchange. NYSE Arca Equities Rule 5.5(e) states that, for continued listing, the common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements. The Exchange proposes to amend this Rule so that the continued listing standard, as proposed to be modified as discussed below, would apply to both warrants and rights to purchase listed securities.<sup>8</sup> As is the case with the proposal to add rights to the initial listing standards, the purpose for this change is to allow the Exchange to list rights so that it can offer investors more investment options, while also remaining competitive in the marketplace.

As stated above, NYSE Arca Equities Rule 5.5(e) provides, in pertinent part, that the underlying common stock of the company or other security must meet the applicable Tier I

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<sup>8</sup> The Exchange states that Nasdaq's continued listing standards for warrants also apply to rights, as set forth in Nasdaq Rule 4450(d).

maintenance requirements under NYSE Arca Equities Rule 5.5. The Exchange proposes to amend this language to state that, in the case of warrants and rights, the common stock of the company or other security underlying the warrants or rights, as applicable, must continue to be listed on a national securities exchange. The Exchange believes that, as long as the security underlying warrants and rights satisfies the listing standards of another national securities exchange and are otherwise in good standing for trading, investors would be able to obtain additional investment options and, at the same time, remain protected. The Exchange also proposes this change to simplify the continued listing standards under NYSE Arca Equities Rule 5.5(e) and ensure that the issuer of an underlying security is listed on a national securities exchange, in the interest of protecting investors.

#### Listing Standards for Units

Currently, the Exchange has no separate initial quantitative listing standards for Units, although it has a definition and continued listing standards for Units.<sup>9</sup> The Exchange proposes to adopt initial listing standards for Units under proposed NYSE Arca Equities Rule 5.2(k). The Exchange states that the proposed standards are substantially similar to those under Nasdaq Rule 4420(h).<sup>10</sup>

In particular, under proposed NYSE Arca Equities Rule 5.2(k), all Units must have at least one equity component and all components must meet the initial and continued listing

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<sup>9</sup> NYSE Arca Equities Rule 5.5(a) states that, in the case of Units, the Exchange will normally consider suspending dealings in or delisting if any of the component parts do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e). If one or more of the components is otherwise qualified for listing, that component may remain listed. Where all component parts of a Unit do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) – (e), the Unit will be delisted from the Exchange. See supra note 3.

<sup>10</sup> See Nasdaq Rule 4420(h). See also Securities Exchange Act Release No. 49746 (May 20, 2004), 69 FR 30356 (May 27, 2004) (SR-NASD-2004-81) (approving listing standards for units).















